

Brussels, 11 July 2007

Second evaluation report on the state of transposition of the Framework Decision on the European arrest warrant and the surrender procedures between Member States

What is the European arrest warrant?

The Framework Decision adopted by the Council on 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (hereinafter called "the Framework Decision") set up a new instrument for surrendering wanted persons, thereby breaking with the traditional extradition procedure. Unlike the latter, the European arrest warrant is an entirely judicial procedure, i.e. it takes place only between courts, with no involvement of political authorities. With the arrest warrant there come binding time limits for the conduct of the procedure, the compulsory use of a single form and a limitation of the grounds for non-execution, which are listed exhaustively in the Framework Decision.

What is a framework decision?

A framework decision is a decision which is binding on Member States as to the result to be achieved but which leaves them free to decide on the choice of methods.

What does the list of 32 categories of offence consist of?

The Framework Decision contains a list of 32 categories of offences the double criminality of which is no longer to be verified where the offences are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years. The double criminality requirement means that the requested judicial authority can execute a European arrest warrant for a given offence only if that offence is also punishable under its domestic law. It is this requirement that is abolished in the case of the 32 offences that are listed. Greater trust is therefore called for in the judicial system of the requested State on the one hand and of the requesting State on the other. The list includes participation in a criminal organisation, terrorism, trafficking in human beings, sexual exploitation of children and child pornography, illicit trafficking in narcotic drugs and psychotropic substances, illicit trafficking in weapons, munitions and explosives, corruption, fraud, laundering of the proceeds of crime, counterfeiting currency, computer-related crime, environmental crime, facilitation of unauthorised entry and residence, murder, grievous bodily harm, illicit trade in human organs and tissue, kidnapping, illegal restraint and hostage-taking, racism and xenophobia, organised or armed robbery, illicit trafficking in cultural goods, swindling, counterfeiting, rape, etc.

How was the report produced?

The Commission evaluated the measures taken by the 27 Member States to transpose the Framework Decision into national law from 2005 up to 1 June 2007.

To that end, the Commission based itself not only on an analysis of the various national transposition laws but also on the comments made by the Member States following publication of the first report and on the data transmitted by the Council's General Secretariat.

The present report seeks to identify Member States' good practices and any remaining difficulties in transposing the European arrest warrant.

What are the good practices identified by the report?

The annex attached to the report in the form of a staff working document identifies good practices and the difficulties encountered in transposing the Framework Decision. Among good practices, the Commission has thus singled out the domestic legislative measures taken by Member States which have in particular helped to define more closely the legal basis making it possible at national level to take over execution of the sentence on the wanted person, provisionally arrest a person forming the subject matter of an Interpol alert issued by a Member State which is not yet party to the Schengen Information System, or allow accessory surrender.

What are the shortcomings identified by the report?

The major difficulty resides in the different degrees of transposition of those articles of the Framework Decision which deal with the optional and mandatory grounds for non-execution. Article 3 of the Framework Decision provides for only three mandatory grounds for non-execution, namely: amnesty, *ne bis in idem* (no one may be prosecuted, sentenced or punished twice for the same offence) and the fact of the wanted person being below the age of criminal responsibility. Article 4 lays down only seven optional grounds for non-execution which Member States may or may not transpose into their domestic law.

Some Member States are still reluctant to surrender their nationals and have reintroduced the double criminality test, making such surrenders much more complicated. In so doing, some Member States have limited the application of the principle of mutual recognition. Other Member States have, moreover, stopped surrendering their nationals while insisting on additional safeguards not provided for in the Framework Decision.

Lastly, numerous problems have arisen in relation to the determination of the competent judicial and central authorities pursuant to Articles 6 and 7 of the Framework Decision. Although the Framework Decision on the European arrest warrant provides that the issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State, and that the executing judicial authority shall be the competent judicial authority of the executing Member State, some Member States have in fact designated either directly or indirectly the Ministry of Justice. Other Member States have designated the Ministry of Justice to fulfil the task of the central authority by entrusting to it powers akin to those of a judicial authority. This is contrary to the terms of the Framework Decision.

In which countries is the European arrest warrant applicable?

The European arrest warrant is applicable in the 27 Member States of the European Union, all of which have transposed the Framework Decision.

What offences are covered by the European arrest warrant?

Article 32 of the Framework Decision leaves Member States free to choose the date of commission of offences as from which they wish to see the European arrest warrant applied, provided that that date may be no later than 7 August 2002.

France, for example, has chosen the date of 1 November 1993: no European arrest warrant may therefore be executed if the offences were committed before 1 November 1993. Austria and Italy have also made a statement under Article 32.

The Czech Republic and Luxembourg have, for their part, made statements that are inconsistent with Article 32 of the Framework Decision in that they concern European arrest warrants for which CZ and LU are both issuing States and executing States. In the case of CZ, this difficulty has been resolved by the adoption of an amendment to the transposition law which came into force on 1 July 2006. In addition, CZ now accepts and issues arrest warrants for offences committed before 1 November 2004, except in the case of its own nationals.

In general, where it proves impossible to apply the European arrest warrant, either the ordinary law rules or the simplified rules on extradition apply.

What are the grounds for non-execution that have been wrongly introduced by national laws?

Some Member States have added grounds for non-execution which are not provided for in the Framework Decision, in total contradiction with its provisions.

For example, the United Kingdom has included in its transposition law a ground for non-execution based on passage of time and another based on extraneous considerations, both of which are contrary to the Framework Decision.

To give another example, Italy, in its transposition law, prohibits surrender if the offence to which the European arrest warrant relates is political in nature. It also prohibits execution of a warrant where the victim consented to the act constituting the offence, where the wanted person is an Italian citizen and he or she did not know that the conduct in question was unlawful, where the wanted person is a pregnant woman or the mother of children below the age of three living with her (except in cases of exceptional gravity), where the offence was committed under circumstances of *force majeure* or by chance, where the evidence underlying or grounds for the issuing of the warrant are insufficient, and where the law of the issuing State places no limits on pre-trial detention, which is the case in Belgium and Luxembourg, for example.

Other examples are given in the staff working document annexed to the report.

Which countries issue the largest number of European arrest warrants?

According to the statistics for 2005 communicated by the Member States to the Council (Document 9005/5/06 REV 5 of 18 January 2007), of the 6 900 arrest warrants issued, France issued the largest number (1 914). Poland came second, with 1 448 arrest warrants issued, followed by Spain (519).

Which countries receive the largest number of European arrest warrants?

In 2005 (Document 9005/5/06 REV 5 of 18 January 2007), the United Kingdom came first, followed by Spain, France and the Netherlands.

What are the key figures for the European arrest warrant?

See the attached sheet.

Do all countries now agree to surrender their nationals?

The rules on the European arrest warrant abolish non-execution of surrender on grounds of the wanted person's nationality. This generalisation of the surrender of nationals is one of the Framework Decision's most significant achievements. But it has not been without difficulties of a constitutional nature in some Member States.

Two Member States - Portugal and Slovenia - anticipated and overcame these difficulties before transposing the Framework Decision. France also carried out a constitutional revision by means of a law of March 2003.

In three other Member States, the difficulties became apparent after the event.

- in Germany, the transposition law was annulled by a decision of the Federal Constitutional Court dated 18 July 2005; the decision prevented the surrendering of German citizens, but not the extradition of foreign nationals, until the new law of 20 July 2006 entered into force on 2 August 2006.

- in Poland, with a decision of the Constitutional Tribunal dated 27 April 2005; the Tribunal deferred the effects of the partial annulment of the transposition law until 6 November 2006; The amendments were introduced in time and, since 7 November 2006, Poland has surrendered its nationals on condition that the offence for which surrender is requested was committed outside Poland and is an offence under Polish law - something which nevertheless stands in contradiction with the Framework Decision.

- lastly, in a decision dated 7 November 2005, the Supreme Court of Cyprus also declared the law transposing the EAW contrary to the Cypriot Constitution; a revision entered into force on 28 July 2006; the new Article 11 as thus amended places, however, a time constraint on the possibility of surrendering nationals inasmuch as this is possible only for acts committed after the date of accession of CY to the Union, i.e. 1 May 2004.

Which countries have had to change their Constitution because of the European arrest warrant?

Cyprus, France, Poland, Portugal and Slovenia, as is explained in answer to the question "Do all countries now agree to surrender their nationals?"

Does the arrest warrant adequately protect fundamental rights?

Yes. The obligation for all Member States to respect fundamental rights is laid down in the Framework Decision. More precisely, recitals 12 and 13 and Article 1(3) include a reference thereto. Article 1(3) thus provides expressly that the Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

To find out more about Vice-President Frattini's work please visit his website:
http://www.ec.europa.eu/commission_barroso/frattini/index_en.htm

Mandat d'arrêt européen Chiffres clefs pour 2006

Source: COPEN 106 11371/07 du 9 juillet 2007

Malgré l'absence d'outil statistique commun aux Etats membres, les données transmises par ceux-ci confirment une généralisation de la pratique du mandat d'arrêt européen et permettent de dégager de grandes tendances qui attestent de l'efficacité de la procédure.

- Sur la totalité de l'année 2006, ce sont près de 5832 mandats qui ont été émis par les 14 Etats membres ayant communiqué des données à ce sujet au 9 Juillet 2007.
- 1456 personnes remises (données fournies par 14 pays).
 - Parmi les personnes remises en 2006, la moitié l'ont été avec leur consentement (51% exactement).
 - 29% des personnes remises en 2006 étaient des nationaux (ou résidents) de l'Etat membre qui a consenti à les remettre.
- Des remises dans de très bons délais:
 - 5 semaines en cas de non consentement environ.

Ces chiffres pour 2006 qui ne sont pas encore complets confirment cependant que l'instrument du mandat d'arrêt européen est de plus en plus utilisé.

Mandat d'arrêt européen Chiffres clefs pour 2005

Source: COPEN 75 9005/5/06 REV 5 du 18 Janvier 2007

Malgré l'absence d'outil statistique commun aux Etats membres, les données transmises par ceux-ci confirment une généralisation de la pratique du mandat d'arrêt européen et permettent de dégager de grandes tendances qui attestent de l'efficacité de la procédure.

- Sur la totalité de l'année 2005, ce sont près de 6900 mandats qui ont été émis par les 23 Etats membres ayant communiqué des données à ce sujet (DE et BE exceptés). Doublement en comparaison de 2004. Plus de 8500 mandats reçus par les 23 Etats membres (total supérieur au nombre d'émissions car un mandat d'arrêt peut être adressé à plusieurs Etats membres).
- 58% transmis via Interpol, 52% via SIS (pour les 13 pays ayant accès).
- Dans plus d'un cas sur quatre, les mandats émis ont conduit à la localisation et à l'arrestation de la personne recherchée (près de 1770 arrestations)
- Sur ces 1770, 1532 ont été effectivement remises (taux de 85% - alors que le taux était de 60% en 2004).
 - Parmi les personnes remises en 2005, la moitié l'ont été avec leur consentement (un tiers en 2004).
 - Plus du cinquième des personnes remises en 2005 étaient des nationaux (ou résidents) de l'Etat membre qui a consenti à les remettre, une garantie au titre de l'article 5(3) de la décision-cadre ayant été requise alors dans un cas sur deux.
- Des remises dans de meilleurs délais:
 - 11 jours en moyenne si personne consent (15 jours en 2004).
 - 5 semaines en cas de non consentement (45 jours en 2004).
 - 5% des remises excèdent le délai maximum de 90 jours.

Les chiffres non encore officiels pour 2006 confirment cette nette tendance à la hausse d'année en année.